

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NICHOLAS BUCCIARELLI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 23-cv-14097-ESK

OPINION AND ORDER

THIS MATTER is before the Court on petitioner Nicholas Bucciarelli's motion to withdraw (Motion) his *pro se* motion to vacate, set aside, or correct his federal sentence filed pursuant to 28 U.S.C. § 2255 (2255 Motion), docketed at ECF No. 8, and his amended 2255 motion (Amended 2255 Motion), docketed at ECF No. 38. (ECF No. 41.) Respondent United States consents to the Motion. (ECF No. 43.) For the following reasons, I will grant the Motion.

1. Petitioner's *pro se* 2255 Motion raised three ineffective assistance of counsel claims: (1) trial counsel was ineffective because of a conflict of interest (Claim One); (2) trial counsel was ineffective for failing to investigate a potential witness (Claim Two); and (3) trial counsel was ineffective for failing to challenge a sentencing enhancement (Claim Three). (ECF No. 8 pp. 4, 5, 7.)

2. On April 24, 2024, I found that an evidentiary hearing was warranted on all three claims as there were disputed factual issues that required credibility determinations. (ECF No. 21.) Counsel was appointed to represent petitioner and entered an appearance on May 28, 2024. (ECF No. 29.)

3. The hearing is scheduled for January 13, 2025. (ECF No. 36.)

4. On October 7, 2024, I permitted petitioner to amend the *pro se* 2255 Motion to withdraw Claim Two and amend Claim Three by providing additional information. (ECF No. 37.)

5. On December 20, 2024, petitioner filed the Motion seeking to withdraw the *pro se* 2255 Motion and the Amended 2255 Motion. (ECF No. 41.)

6. Petitioner certifies that he has consulted with counsel about his decision to withdraw his 2255 motions, including the restrictions on second or successive § 2255 motions. (ECF No. 41 pp. 5, 6.)

7. The United States consents to the Motion. (ECF No. 43.)

8. After reviewing the certifications of petitioner and counsel, and with the consent of the United States, I find that petitioner has knowingly and voluntarily made the decision to withdraw the 2255 Motion and the Amended 2255 Motion.

9. To the extent a certificate of appealability is required, I decline to issue one as jurists of reason would agree that petitioner has knowingly and voluntarily made the decision to withdraw the 2255 Motion and the Amended 2255 Motion.

Accordingly,

IT IS on this **26th** day of **December 2024** **ORDERED** that:

1. The Motion at ECF No. 41 is granted. The 2255 Motion, ECF No. 8, and Amended 2255 Motion, ECF No. 38, are dismissed with prejudice.
2. The evidentiary hearing presently scheduled for January 13, 2025 is cancelled.
3. No certificate of appealability shall issue. 28 U.S.C. § 2253(c).

/s/ Edward S. Kiel
EDWARD S. KIEL
UNITED STATES DISTRICT JUDGE